



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 08-06658 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro Se*

October 30, 2009

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (SF-86) on June 20, 2007. On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on May 5, 2009, Applicant admitted all four of the allegations set forth in the SOR and declined a hearing on the record. Department Counsel submitted a File of Relevant Materials (FORM), dated August 10, 2009. Applicant received the FORM on August 17, 2009, but declined to file a response to its contents. On October 8, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge. I was assigned the case that day. Based on a review of the

case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

### Findings of Fact

Applicant is a 46-year-old production manager who has worked for the same defense contractor since October 1998. He has served in his present capacity since April 2004. According to his SF-86, Applicant served in the military reserve for approximately four years. He married in 1990 and has two minor children. He attended college for about three years. In choosing an administrative determination without a hearing, Applicant chose to rely on the written record. Because his submissions are brief, the facts of record are scant. Consequently, these findings are based on materials included in the FORM.

At some unspecified time in the recent past, however, Applicant purchased a used car hauler with the hopes of establishing a car towing business. The truck needed approximately \$30,000 in repairs. Additional revenue was lost as repairs were made. He abandoned the enterprise when he could no longer afford the business-related expenses.

Applicant has two mortgages on his home for approximately \$109,000 and \$437,000, respectively. They amount to a total of approximately \$546,000.<sup>1</sup> He fell behind on his home loans when the hauling business failed. A loan for about \$109,000 was written off by the lender. Applicant intends to repay the \$109,000 loan “as our income allows.”<sup>2</sup> The latter loan for approximately \$437,000 was restructured under a repayment plan with more affordable terms.<sup>3</sup> Applicant did not submit documentation regarding his income history, the repayment plan, or any payments under that plan.

In addition, Applicant also financed two investment properties in 2007. Those properties went into foreclosure. The first property left him indebted on a loan for about \$385,000.<sup>4</sup> Regarding this debt, he states: “It is my desire to start a repayment plan that will fit within our budget, as our income increases.”<sup>5</sup> He did not submit any documents reflecting his present income or financial resources, his wife’s most recent income, or a current budget. The loan on the second investment property was for approximately

---

<sup>1</sup> SOR allegations ¶¶ 1.c-1.d.

<sup>2</sup> Response to the SOR at 3.

<sup>3</sup> *Id.*

<sup>4</sup> SOR allegation ¶ 1.a.

<sup>5</sup> Response to the SOR at 2.

\$264,308.<sup>6</sup> Applicant states: “We are currently making a small monthly payment to a third party collector. . . .”<sup>7</sup> He did not submit any documentation regarding such payments.

Applicant admits responsibility for all four debts at issue. He stresses that his current financial difficulty arises from his attempts to “build for the future,” not from “living above one’s means.”<sup>8</sup> Neither he nor his wife gambles, uses drugs, or is the type to engage in criminal activity. His family leads a disciplined, healthy lifestyle. He drives “the same car [he] paid \$800 dollars for, three years ago.”<sup>9</sup> He has no credit card debt or revolving credit. Their vacation travel is limited: “We just don’t finance trips, so we don’t take them if we can’t pay for them.”<sup>10</sup> But for his real estate debts, he states that he lives within his means, although no documentation was introduced indicating what his income and expenses are.

Applicant unsuccessfully attempted to solicit investors and to execute short-sales to avoid the foreclosures at issue. He was advised to consider bankruptcy, but would rather address his debts through “hard work and persistence.”<sup>11</sup> His wife was laid off, but is now seeking a position requiring a security clearance. Applicant assumes she will also face financial security concerns.<sup>12</sup> If so, he is unsure they will be able to repay their loans.<sup>13</sup>

## Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a

---

<sup>6</sup> SOR allegation ¶ 1.b. Applicant admitted to a debt of \$264,308, although the FORM notes that the obligation alleged, after foreclosure, was reduced through a deficiency judgment to only \$94,000. FORM at 4.

<sup>7</sup> Response to the SOR at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* and *Id.* at 3.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

number of variables known as the “whole person concept.” An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>14</sup> The burden of proof is something less than a preponderance of evidence.<sup>15</sup> The ultimate burden of persuasion is on the applicant.<sup>16</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>17</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>18</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>19</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict

---

<sup>14</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>15</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>16</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>17</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>18</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>19</sup> *Id.*

guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline F (Financial Considerations) is the most pertinent to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## **Analysis**

### **Guideline F – Financial Considerations**

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”<sup>20</sup> The Directive sets out several potentially disqualifying conditions under this guideline. Applicant admitted he has over \$1,000,000 in real estate-related debt. Such delinquent debt is sufficient to raise security concerns under financial considerations disqualifying condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 19(c) (“a history of not meeting financial obligations”). Consequently, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant tried to start a sideline business in automobile hauling, but approximately \$30,000 in repairs and business disruptions forced him to abandon the business. Trying to sustain that business affected his ability to make timely payments on, at least, his \$546,000 in mortgages on his personal residence. To the extent the failing business affected the family’s ability to make timely mortgage payments, financial considerations mitigating condition (FC MC) AG ¶ 20(a) (“the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”) and FC MC AG ¶ 20(b) (“the conditions that resulted in the behavior were largely beyond the person’s control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances”) apply.

Applicant was advised by someone to consider bankruptcy, but there is no evidence he received financial counseling. There is no documentation of progress in paying his debts. Therefore, neither FC MC AG ¶ 20(c) (“the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control”) nor FC MC AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) applies. No other FC MCs apply.

---

<sup>20</sup> Revised Adjudicative Guideline (AG) ¶ 18.

## Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Multiple facts speak in Applicant's favor. He is a mature man who has raised a family and been with the same employer for over a decade. He served in the United States military. He and his wife attempted to establish a sideline business and purchased investment properties in the hopes of building for their future.

Multiple facts also speak against Applicant. He provided no documentation regarding his efforts to address any of the debts at issue, nor did he provide any evidence regarding his income, his wife's former income, his financial resources, or a budget. Consequently, whether he has been living within his means cannot be confirmed. Such information is particularly important given his financial caution regarding his car and vacation plans versus his approximately \$550,000 in residential home loans. Further, while his inability to find investors or short-sell his investment properties could be blamed on the current recession, it is unclear as to how he ever made timely payments on the additional \$500,000 in obligations generated by his ownership of those properties.<sup>21</sup> In choosing an administrative determination, Applicant failed to offer sufficient documentation regarding his efforts to address his debts. He also failed to offer evidence as to the financial context in which his debts and his efforts could be considered. The burden in these proceedings is on the applicant. Based on the unelaborated record, financial considerations security concerns remain. Therefore, I

---

<sup>21</sup> Indeed, the \$30,000 car hauling business loss, without more evidence, appears to be a relatively minor financial setback in contrast to real estate obligations exceeding \$1,000,000.

conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

**Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraph 1.d:         | Against Applicant |

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge